

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

SECOM-D-238

3 November 1981

MEMORANDUM FOR: Records Management Division
Office of Information Services

FROM:

Chairman

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SUBJECT: Revision of E.O. 12065

REFERENCE: DDA Memorandum dated 29 October 1981, "Information Security Oversight Office (ISOO) Draft of Proposed New Executive Order to Replace E.O. 12065"

1. This provides my comments on the draft revision of E.O. 12065 circulated by the reference.

2. I am concerned about the following matters bearing on this draft:

a. The old RESTRICTED classification should be re-established as a fourth classification to meet a security protection need whose dimensions are becoming more apparent. The Intelligence Community needs a means of protecting information items which, when taken individually, do not meet the tests for CONFIDENTIAL classification, but which, when aggregated, are sensitive and would damage the national security if disclosed. The seriousness of this matter for our security has been compounded by increases in computer capability which permit "mosaic" effect analysis of large quantities of open source material to obtain a "classifiable" product. x

b. The DCI's role in protecting intelligence sources and methods should not be eroded by the use of unfortunate terminology in the draft order. I refer to the draft's use of the term "cryptology" (or "cryptologic") as something separate and distinct from intelligence sources and methods, and as an area under the security jurisdiction

of the Secretary of Defense for several purposes. The official, current, Intelligence Community Glossary of Intelligence Terms says that this area is the sum of signals intelligence (SIGINT) and communications security (COMSEC). SIGINT security policy has for many years been prescribed by the DCI (e.g., DCID 6/3). NSCID 6 makes the DCI responsible for that area. If that is to be changed it should be addressed directly in a more appropriate forum (e.g., revision of E.O. 12036), and not indirectly called into question in this Order in a manner which could lead to sterile bureaucratic disputes about "turf." The remedy is easy. The same official Glossary of Terms defines "cryptography" (and "cryptographic") as virtually synonymous with COMSEC. COMSEC matters are the responsibility of the Secretary of Defense. His authority therefor would be properly recognized; the security protection needs of our communications would be highlighted at the national level; and the DCI's responsibility and authority for that portion of intelligence and intelligence sources and methods known as SIGINT would not be clouded - if "cryptography" (or "cryptographic") were substituted for "cryptology" (or "cryptologic") throughout the draft Order. ✓

c. Neither this draft nor E.O. 12065 recognizes that high-volume, high-technology information systems are not susceptible to the classification marking requirements applicable to paper documents. Sensitive information in such systems has to be labeled as classified if it is to enjoy the protection of the law (e.g., withholdable under the FOIA as "properly classified" according to applicable Executive Order). It should be so labeled so that authorized users are put on notice of the degree of protection it needs. Section 1-501 of the draft should be revised to make it applicable only to documentary information, and a new section added reading:

"Classified information in other than written document form shall have its classification markings clearly associated with it in a manner appropriate to the media form involved."

good point!

This language has been coordinated with and is supported by the staff of the Deputy Under Secretary of Defense for Policy. Implementation guidance for this policy should be included in the directive to be issued by the ISOO.

d. I believe the absence of policy guidance on portion marking is a serious omission. I note that sheet VI in the ISOO comparison of major features (attached to the reference) states that about 95% of all classification actions are

derivative in nature. Classified, finished intelligence products are by their very nature derivative. Sound security management requires that those who "cut and paste" to produce a new classified item from a variety of classified inputs have the "tools" at hand in the form of specific classification indicators on the portions of those documents they are drawing from. This makes it possible for and encourages producers to recognize and carry forward the proper security protection markings. If what producers are using doesn't bear portion markings, they will be inclined to substitute their own judgment - if they guess low, the information is inadequately protected; if high, the credibility of classifications is debased ("when everything is secret, nothing is secret" - from Supreme Court decision in the Pentagon Papers Case). I strongly recommend insertion of a new section in the draft Order reading substantially as follows:

"Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification designation, and which portions are not classified. Classified working papers for use only within the agency of origin, and classified documents generated by contractors for use within contracting agencies need not be portion marked if the cognizant agency so determines." x ✓

e. The absence in the draft of any requirement for minimum personnel security and investigative standards for access to classified information concerns me. Disparities and misunderstandings between agencies on what their standards are would be minimized if this Order required them to be stated. Since this particular issue is of current, personal interest to the DCI/DDCI and the Secretary/Deputy Secretary of Defense, it should be addressed and the following language should be added to section 4-101 of the draft Order:

"Agency heads shall issue and maintain minimum investigative standards that must be satisfied before access to information classified in each of the four [vice three to reflect new Restricted classification] national security classification designations is permitted." ✓

3. Other matters that should be addressed in this draft are:

a. A better overall approach to classified records management should result if all agencies were required to make continuing reviews of their classified holdings. The

present draft Order's requirement for the Archivist to make systematic reviews, coupled with a permissive regime for agency heads, would appear to encourage diverse practices. I would encourage an expression of policy making all responsible for "continuing review," as opposed to "systematic review," which connotes a measurable rate of progress that could become an element in litigation. x

b. The draft Order locates but does not establish the ISOO. Suggest that section 5-102 have added to its last sentence the words", which is established as an element of the General Services Administration." ? x

c. The sanctions section of the draft Order does not identify to whom or to what officers and employees are enjoined from making unauthorized disclosures. Suggest that section 5-402(a) be revised to read:

"knowingly, willfully or negligently, and without proper authority, disclose to unauthorized persons information properly classified under this or predecessor Orders." ✓

d. In support of the matter discussed in "c" above, add definitions to section 6-1 for the following:

"Unauthorized disclosure for purposes of this Order includes either a communication or physical transfer of classified information to an unauthorized person." ✓

"Unauthorized persons for purposes of this Order are those who do not have both a current security clearance for access to the level of classified information involved and a specific, identifiable need for access to the information involved in order to accomplish an official and authorized Government purpose." ✓

e. I question the need to require systems of accounting for special access programs (section 4-202 of the draft Order). In particular, I question the security wisdom of granting the ISOO Director access to such accountings. ✓

4. Please keep me informed of developments concerning this draft Order.

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